

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JEREMY POWELL,

Plaintiff,

v.

CITY OF ELKO, *et al.*,

Defendants.

Case No. 3:21-cv-00418-ART-CSD

ORDER

Pro se Plaintiff Jeremy Powell brings this action under 42 U.S.C. § 1983 against Defendants Bartolo Ortiz, Brenton Pepper, Sgt. Hood, Rosina Garcia, Joanna Contreras, and John Adkins (collectively, “Defendants”), alleging that various Defendants used excessive force in arresting him and failed to provide necessary medical care, resulting in permanent disfigurement of his thumb. (ECF No. 6 at 7, 13, 17-23.)

Before the Court is a Report and Recommendation (“R&R”) of United States Magistrate Judge Craig S. Denney (ECF No. 129) recommending that the Court deny Plaintiff’s Notice of Motion for Leave of Court to Amend Complaint (ECF No. 122) and Notice of Leave of Court to Extend Page Limit (ECF No. 121). The R&R was filed on February 14, 2023, and Mr. Powell initially had until February 28, 2023 to file an objection. (ECF No. 129.) In light of Mr. Powell’s difficulties receiving and retaining documents (ECF Nos. 137 at 2-5 and 149 at 1-2), the Court on May 10, 2023 granted him an additional forty-five days to object and sent the order to his then-current address in Gunnison, Utah. (ECF Nos. 137 (updating address) and 139 (order extending deadline).) Mr. Powell confirmed on June 9, 2023, that he received the order granting him an extension of forty-five

1 days, believed he still had seventeen days to object, and requested additional time
2 claiming that he lost his legal papers when he was moved from one facility to
3 another, lacked access to any legal materials or assistance, and his then-current
4 facility did not cover postage for legal cases outside Utah. (ECF No. 149.) He again
5 moved the Court to appoint counsel (ECF No. 150), which Judge Denney has
6 since denied (ECF No. 160), but did not object to the R&R.

7 On September 1, 2023, Mr. Powell again updated his address, reflecting
8 that he was paroled to the Bonneville Community Correctional Center. In light
9 of this information, the Court granted him until September 22, to object to the
10 R&R. (ECF No. 163). It appears that order was delivered, but Mr. Powell did not
11 file an objection to the R&R.

12 The Court “may accept, reject, or modify, in whole or in part, the findings
13 or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where
14 a party fails to object to a magistrate judge’s recommendation, the Court is not
15 required to conduct “any review at all . . . of any issue that is not the subject of
16 an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v.*
17 *Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the
18 magistrate judges’ findings and recommendations is required if, but *only* if, one
19 or both parties file objections to the findings and recommendations.”) (emphasis
20 in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that,
21 when there is no objection, the Court “need only satisfy itself that there is no
22 clear error on the face of the record in order to accept the recommendation.”).
23 Furthermore, “where the petitioner is *pro se*, particularly in civil rights cases, a
24 court must construe the pleadings liberally and afford the petitioner the benefit
25 of any doubt.” *Chambers v. C. Herrera*, 78 F.4th 1100, 1104 (9th Cir. 2023)
26 (internal quotation marks omitted) (citing *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th
27 Cir. 2010)).
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1 The Court is satisfied that Judge Denney did not clearly err. Here, Judge
2 Denney recommends the denial of Mr. Powell's motion for leave to file a second
3 amended complaint because Mr. Powell failed to overcome Fed. R. Civ. P.'s "good
4 cause" standard, which applies to amendment requests filed at this point in the
5 litigation process (i.e., after entry of a Rule 16 scheduling order deadline). (ECF
6 No. 129 at 4-5.) Judge Denney recommends the denial of Mr. Powell's motion to
7 extend page limit because denial of Mr. Powell's motion to amend renders the
8 extension motion moot. *Id.* at 5. The Court agrees with Judge Denney on both
9 points. Having reviewed the R&R and the record in this case, the Court will adopt
10 the R&R in full.

11 It is therefore ordered that Mr. Powell's motion for leave to file a second
12 amended complaint (ECF No. 122) is denied.

13 It is further ordered that Mr. Powell's motion to exceed the page limit for
14 his proposed second amended complaint is denied as moot.

15 DATED THIS 28th Day of September 2023.

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19 ANNE R. TRAUM
20 UNITED STATES DISTRICT JUDGE
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